

No. 15578

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United States  
Court of Appeals  
for the Ninth Circuit

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JOSEPH ESTEN,

Appellant,

vs.

CRULES R. CHEEK, Trustee in Bankruptcy of  
the Estate of Joseph Esten, bankrupt,  
Appellee.

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Transcript of Record

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Appeal from the United States District Court  
for the Southern District of California,  
Central Division

FILED

SEP 13 1957

PAUL P. [illegible], CLERK



No. 15578

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Court of Appeals  
for the Ninth Circuit

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Appellant,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

PHILL SILVER,

1680 North Vine Street,  
Room 1201 Taft Building,  
Hollywood 38, California.

For Appellee:

LESLIE S. BOWDEN,

448 South Hill Street,  
Los Angeles 13, California. [1]\*

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\* Page numbers appearing at bottom of page of Original Transcript of Record.





In the District Court of the United States, Southern District of California, Central Division

No. 68324-C

In the Matter of

JOSEPH ESTEN,

Bankrupt.

OBJECTIONS TO TRUSTEE'S REPORT OF  
EXEMPT PROPERTY, AND POINTS  
AND AUTHORITIES

Comes now the Bankrupt, Joseph Esten, and files this his Objections to the Trustee's Report of Exempt Property.

Bankrupt states that the Trustee has refused to set aside his exempt real property, the property located at 1349-1351 South Mansfield Avenue, Los Angeles, California, for the reason that no proper Declaration of Homestead had been recorded.

Your petitioner states that on or about April 15, 1955, there was filed in the office of the County Recorder, a Declaration of Homestead duly executed by the bankrupt's wife. That said Declaration of Homestead was acknowledged and sworn to in the manner required by law.

That through an error the lot number of the property involved was described as lot "104" whereas in fact the correct lot number was 204. The Declaration of Homestead, however, correctly referred to the tract number, Map recordation and book and page thereof, from the office of the

County Recorder. Said Declaration of Homestead reads as follows:

“Lot 104, Tract 5069, as per Map recorded in [26] Book 56, pages 82-85 of Maps in the office of the County Recorder of said County.”

The petitioner relies upon the following authorities, all of which support his position that the Declaration of Homestead stated, though erroneous as to lot number but is nevertheless valid where other writing matter in the Declaration sufficiently identifies the homestead property. In the within case the property is sufficiently identified by the correct tract number, book and page number of the Maps in the office of the County Recorder.

Your petitioner further states that a copy of a Trustee's Report was mailed to your petitioner's attorney. That your petitioner was not served with a copy thereof; that he did not know that he was required to file written objections to the trustee's report; nor was he so informed by his counsel that it was necessary for him to do so.

That your petitioner has no other assets other than the homestead and that he would suffer great hardship and distress if his homestead is disallowed. That he acquired the property in joint tenancy with his wife and that his wife has a vested separate estate in and to this property.

Wherefore the Bankrupt respectfully asks that he be permitted to file written objections to the Trustee's report and that the property be declared

to be exempt; and for such other and further relief as may be proper.

/s/ JOSEPH ESTEN,  
Petitioner. [27]

Points and Authorities Relied Upon by the Bankrupt: Quackenbush vs. Reed, 102 Cal. 493; Estate of Geary, 146 Cal. 105; Stanley vs. Green, 12 Cal. 148, 165; Estate of Ogburn, 105 Cal. 97; Ornbaum vs. His Creditors, 61 Cal. 455; 9 Cal. Jur. Sec. 157, holding that if the property can be identified by the description by a competent surveyor with or without the aid of extrinsic evidence, then the deed is valid. [28]

Duly Verified.

Affidavit of Service by Mail Attached. [29]

[Endorsed]: Filed May 10, 1956.

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[Title of District Court and Cause.]

PETITION FOR ORDER TO SHOW CAUSE  
WHY DECLARATION OF HOMESTEAD  
ON REAL PROPERTY OF BANKRUPT  
SHOULD NOT BE REFORMED TO COR-  
RECT CLERICAL ERROR

To the Honorable Reuben G. Hunt, Referee in  
Bankruptcy:

The Petition of Joseph Esten, Bankrupt, respectfully represents to the court as follows:

## I.

That your Petitioner is the Bankrupt in the above-entitled matter.

## II.

That Crules R. Cheek is the duly qualified and acting Trustee of the above-entitled estate.

## III.

That on September 19, 1955, your Petitioner filed his Petition in Bankruptcy and was adjudged a bankrupt on said date. That said estate is still open.

## IV.

That in Schedule B-4 of the Petition in Bankruptcy, your petitioner listed an equity of \$10,-500.00 interest in land located [30] at 1349 South Mansfield Street, Los Angeles, California.

## V.

That in Schedule B-5 of the Petition in Bankruptcy your petitioner claimed a homestead exemption in the aforesaid real property under the provisions of Sections 1260 to 1265, inclusive, of the Civil Code of California.

## VI.

That on April 24, 1956, the Trustee herein filed his report of exempt property in which the trustee refused to set aside as exempt the real property located at 1349-1351 South Mansfield Avenue, Los Angeles, California, stating as the ground for such refusal that no proper Declaration of Homestead had been recorded with the County Recorder of Los Angeles County.

## VII.

That on April 18, 1955, there was filed with the County Recorder, at Homestead Declaration executed by Anna Esten, the wife of the bankrupt. That in said Declaration of Homestead the real property claimed by the bankrupt as exempt was described by lot number as "Lot 104" Tract 5069 as per map recorded in Book 56, pages 82 to 85 of the Maps in the office of the County Recorder of Los Angeles County. That the true description of said property is Lot "204", Tract 5069 as per map recorded in Book 56, pages 82 to 85 of Maps in the office of the County Recorder of Los Angeles County.

## VIII.

That the error in said Declaration of Homestead in the description of said lot arose in the following manner:

That at the time the bankrupt and his wife purchased said property a typist then in the employ of the Southland Mortgage Corporation did prepare a Deed of Trust and Application for Loan on real estate. That through the mistake of said typist, the description of said property was described in the Application for Loan and in the Deed of Trust as Lot "104" instead of Lot "204". That a copy [31] of said Deed of Trust and Application for Loan containing the erroneous description was handed to the bankrupt and his wife to retain for their files. Subsequently thereto, the error in the description was learned by the typist and a correction made by her in the original deed conveying

the property to the bankrupt and his wife, but said typist failed and neglected to make the correction on the copy which had been given to the bankrupt and his wife. That at the time the wife of the bankrupt was desirous of preparing a Declaration of Homestead she did deliver to her attorney, Phill Silver, the attorney of record for the bankrupt, the copy of the Deed of Trust which had been given to her by the typist in the Southland Mortgage Corporation office, so that her attorney could copy from such Deed of Trust the legal description of the property and insert such legal description in the Declaration of Homestead. That the bankrupt's attorney was not aware at the time his stenographer prepared the Declaration of Homestead that the true description of the property was Lot "204" and not "104". That the wife of the bankrupt herein executed the Declaration of Homestead without being aware, or knowing that the Declaration of Homestead prepared by her attorney contained an incorrect description of the lot number.

#### IX.

That said Declaration of Homestead was recorded in the official records of the Office of the County Recorder.

#### X.

Your petitioner alleges that the error in the Declaration of Homestead was made without any knowledge on his part, or any knowledge on the part of the Bankrupt's wife. That your petitioner and his wife have been and still are in the physical

possession of the real property described as Lot 204, Tract 5069.

#### XI.

That it was the intention of your petitioner and his wife to declare a homestead upon the said real property and to make the said [32] Declaration of Homestead conform to the actual intention of the petitioner and his wife. That it is necessary that the description in the Declaration of Homestead should be amended to conform and be corrected so as to read as follows:

Lot 204 of Tract 5069, as per map recorded in Book 56, pages 82 to 85 of Maps in the office of the County Recorder of said county.

#### XII.

That it was the intention of your petitioner and his wife to declare a homestead upon the said real property and to make the said Declaration of Homestead conform to the actual intention of the petitioner and his wife.

#### XIII.

That it is necessary that the description in the Declaration of Homestead should be amended, reformed and corrected so as to read as follows:

Lot 204 of Tract 5069, as per map recorded in Book 56, pages 82 to 85 of Maps in the Office of the County Recorder of Los Angeles County.

#### XIV.

That your petitioner and his wife have substantially complied with the provisions of the Civil



Code of the State of California, and the Declaration of Homestead recorded by your petitioner and his wife set forth the following facts:

1. That your petitioner was a married woman and that her husband's name is Joseph Esten;

2. That she was residing on the land and premises erroneously described as Lot 104, Tract 5069;

3. That she claimed the land together with the dwelling house thereon as a homestead; [33]

4. That her husband had not made any declaration of homestead and that she therefore made this Declaration for the joint benefit of herself and her husband;

5. That she estimated the cash value of the land and premises to be \$21,000.00;

6. That no former declaration of homestead had been made by her or by her husband;

7. That the character of the property sought to be homesteaded was a duplex.

## XV.

That the Declaration of Homestead was duly signed and executed by the wife of the bankrupt, acknowledged before a Notary Public and recorded in the County Recorder's office of Los Angeles County. That your petitioner and his wife were unaware of the mistake in the description of the real property in the homestead until the Trustee in Bankruptcy filed his report of exempt property and they were notified of this fact for the first time by the attorney for your petitioner in this bankruptcy proceeding.



## XVI.

That there is no adequate remedy at law to enable the petitioner herein to accomplish the remedy that he is petitioning for and that it is essential in order to protect the rights of the bankrupt that the Declaration of Homestead be reformed to set forth the truth and correct description to conform with the intentions of the parties.

Wherefore, your petitioner prays that an order be made directing the trustee to show cause why an order should not be made, as follows:

1. Reforming the mistake in the description of the property in the Declaration of Homestead to read: Lot 204 instead of 104, to carry out the intentions of all the parties thereto as of the date of their execution and recording;

2. Allowing the homestead to be set aside to your petitioner and ordering the trustee to prepare and file an amended report of [34] exempt property, correcting his former report by inserting the correct description of said real property in the report; and

3. For such other and further relief as to the court may seem proper.

/s/ JOSEPH ESTEN,  
Petitioner.

/s/ PHILL SILVER,  
Attorney for Petitioner. [35]

Duly Verified. [36]

[Endorsed]: Filed October 9, 1956.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE WHY DECLARATION OF HOMESTEAD ON REAL PROPERTY OF BANKRUPT SHOULD NOT BE REFORMED TO CORRECT A CLERICAL ERROR

The Bankrupt, Joseph Esten, having filed his verified petition to obtain and secure from this court an Order to Show Cause why the Declaration of Homestead on the real property of the bankrupt should not be reformed to correct a clerical error and why the Trustee's report of Exempt Property should not be amended to conform therewith, and good cause being shown therefor,

It Is Hereby Ordered that the Trustee herein, Crules R. Cheek, show cause, if any he has, before this court in the courtroom of Reuben G. Hunt, Referee in Bankruptcy, on the 24th day of October, 1956, at the hour of 2:00 p.m., why an Order should not be made as follows:

1. Reforming the mistake in the description of the Declaration of Homestead to read Lot 204 of said tract, instead of lot 104 of Tract 5069;

2. Allowing the Homestead Exemption to be set aside to your petitioner and ordering the Trustee to prepare and file an Amended Report of Exempt Property correcting his former report by inserting the [37] corrected description of said real property therein.

It Is Further Ordered that a copy of the Petition for Order to Show Cause and a copy of this

Order to Show Cause be served upon the Trustee, Crules R. Cheek, and the Attorney for the Trustee, Leslie S. Bowden, by United States Mail not later than five (5) days prior to the date set for the hearing of this Order to Show Cause.

Dated: October 10th, 1956.

/s/ REUBEN G. HUNT,

Referee in Bankruptcy. [38]

[Endorsed]: Filed October 10, 1956.

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[Title of District Court and Cause.]

### RESPONSE OF TRUSTEE

Comes now the Trustee in the above entitled matter and answering the petition of the bankrupt herein, alleges as follows:

#### I.

Your Trustee has not sufficient information and belief with which to answer Paragraphs VIII, X, XI, XII, XIII, XIV, XV and XVI of petitioner's petition, and basing his answer on such lack of information and belief, denies each and every allegation contained therein.

And as a Further, Separate and Distinct Defense to Said Petition, Your Trustee Alleges:

#### I.

That at the time of the filing of the petition in bankruptcy herein, no valid homestead had been declared in accordance with the Statute of the State of California and immediately upon the adju-

dication in bankruptcy herein, the title of the bankrupt passed to your Trustee, and your Trustee ever since and now is the owner of an undivided one-half interest in and to the real property described [39] in the petition of the bankrupt upon which he now seeks to claim an exemption.

Wherefore, your Trustee prays that the petition of the bankrupt be dismissed, and for such other and further order as may be proper in the premises.

/s/ CRULES R. CHEEK,  
Trustee,  
/s/ LESLIE S. BOWDEN,  
Attorney for Trustee. [40]

Duly Verified.

Affidavit of Service by Mail attached. [41]

[Endorsed]: Filed October 24, 1956.

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[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case came on regularly for hearing before the Honorable Benno M. Brink, Referee in Bankruptcy, on November 21, 1956, at 2:00 o'clock p.m. Phill Silver appeared as attorney for the bankrupt and Leslie S. Bowden appeared as attorney for the Trustee and the Trustee having been served with a copy of the Petition and Order to Show Cause and the matter having been submitted to the court for decision, the court finds the facts as follows:

### Findings of Fact

1. That each and every allegation contained in paragraphs I through XVI, inclusive, of the Petition for Order to Show Cause are true;

2. That it is true that it was the intention of your petitioner and his wife to declare a homestead upon Lot 204, Tract 5069 as per map recorded in Book 56, pages 82 to 85 of the Maps in the office of the County Recorder of Los Angeles County;

3. That it is true that it is necessary that the description in the Homestead should be amended, conformed and corrected so as to read: Lot 204, Tract 5069, as per map recorded in Book 56, pages [42] 82 to 85 of maps in the office of the County Recorder of Los Angeles County.

### Conclusions of Law

From the foregoing Findings of Fact the court concludes as follows:

1. That Joseph Esten, Bankrupt, is entitled to a Judgment of Reformation of the Declaration of Homestead executed by Anna Esten on April 18, 1955, and recorded in the office of the County Recorder on said date, reforming and correcting the description therein according to the real intent of the parties to read as follows:

Lot 204, Tract 5069, as per map recorded in Book 56, pages 82 to 85, of maps in the office of the County Recorder of Los Angeles County, also described as 1349-1351 South Mansfield Avenue, Los Angeles, California.

2. That the bankrupt is entitled to an order directing the Trustee to execute and deliver any and all documents that are necessary to accomplish and carry out the terms and conditions of the petition for the Order to Show Cause.

3. That Joseph Esten, the bankrupt, is entitled to an Order directing the Trustee, Crules R. Cheek, to prepare and file an Amended Report of exempt property, setting aside as exempt to the bankrupt the property described as Lot 204, Tract 5069, as per map recorded in Book 56, pages 82 to 85 in the Maps of the Office of the County Recorder of Los Angeles; also described by street and number as 1349-1351 South Mansfield Avenue, Los Angeles, California.

Dated this 11th day of December, 1956.

/s/ BENNO M. BRINK,

Benno M. Brink, Referee in Bankruptcy, Acting  
for Reuben G. Hunt, Referee in Bankruptcy.

[Endorsed]: Filed December 11, 1956.

In the District Court of the United States, Southern District of California, Central Division

In Bankruptcy No. 68,324-C

In the Matter of

JOSEPH ESTEN,

Bankrupt.

JUDGMENT AND ORDER REFORMING  
DECLARATION OF HOMESTEAD

The Bankrupt, Joseph Esten, having filed his Petition for an Order to Show Cause why the Declaration of Homestead on the real property of the bankrupt should not be reformed to correct a clerical error therein and to require the trustee to prepare and file an amended report of exempt property, and due notice having been given of the hearing on said Petition and a hearing having been had thereon before the Honorable Benno M. Brink, Referee in Bankruptcy on November 21, 1956 at 2:00 p.m., Phill Silver appearing as attorney for the Bankrupt, and the court having considered the Petition of the Bankrupt and being fully advised in the premises and having filed herein its written Findings of Fact and Conclusions of Law and having directed that Judgment be rendered in accordance therewith,

Now, therefore, by reason of the law and Findings aforesaid, it is hereby Ordered, Adjudged and Decreed as follows:

1. That the Petition for an Order to Reform the Declaration of Homestead on the real Property



of the Bankrupt be, and the same is, hereby granted. [44]

2. That the Declaration of Homestead executed by the wife of the Bankrupt on April 18, 1955, and recorded in the office of the County Recorder on said date be, and the same is, hereby reformed and corrected according to the real intent of the parties so that the description therein shall read as follows:

Lot 204, Tract 5069, as per map recorded in Book 56, pages 82 to 85 of Maps in the office of the County Recorder of Los Angeles County; also described as 1349-1351 South Mansfield Avenue, Los Angeles, California.

3. That Crules R. Cheek, the Trustee, shall execute and deliver to the Bankrupt any and all documents that are necessary to accomplish and carry out the terms of this judgment and order.

4. That the Trustee, Crules R. Cheek, prepare and file an amended report of exempt property correcting his former report by inserting the corrected description of said real property and setting aside as exempt, said real property.

5. That the Trustee is authorized and empowered to do all things necessary to accomplish and carry out the terms and conditions of this order.

Dated: December 11, 1956.

/s/ BENNO M. BRINK,

Benno M. Brink, Referee in Bankruptcy, Acting  
for Reuben G. Hunt, Referee in Bankruptcy.  
Affidavit of Service by Mail attached. [46]

[Endorsed]: Filed December 11, 1956.



[Title of District Court and Cause.]

PETITION FOR REVIEW

To Benno M. Brink, Esquire:

The petition of Crules R. Cheek, Trustee of the above named bankrupt estate, respectfully represents:

1. Your petitioner is aggrieved by the order herein of Benno M. Brink, Referee in Bankruptcy, dated December 11, 1956, a copy of which order is annexed hereto, marked "Exhibit A" and made a part hereof.

2. The Referee erred in respect to said order in that the Referee's finding numbered 1 that the petitioner and his wife have substantially complied with the provisions of the Civil Code of the State of California, was clearly erroneous.

3. The Referee erred in respect to said order in his conclusion of law numbered 1, that Joseph Esten, Bankrupt, is entitled to a judgment of reformation of the Declaration of Homestead executed by Anna Esten on April 18, 1955, and recorded in the office of the County Recorder on said date, reforming and correcting the description therein according to the real intent of the parties hereto, as follows: Lot 204, Tract 5069 as per map [47] recorded in Book 56, pages 82 to 85 of the Maps in the office of the County Recorder of Los Angeles County.

4. The Referee erred in respect to said order in his conclusion of law numbered 2, that the bankrupt is entitled to an order directing the Trustee

to execute and deliver any and all documents that are necessary to accomplish and carry out the terms and conditions of the petition for the order to show cause.

5. The Referee erred in respect to said order in his conclusion of law numbered 3 that Joseph Esten, Bankrupt, is entitled to an order directing the Trustee, Crules R. Cheek, to prepare and file an amended report of exempt property, setting aside as exempt to the bankrupt, the property described as "Lot 204, Tract 5069, as per map recorded in Book 56, pages 82 to 85 of Maps in the office of the County Recorder of Los Angeles; also described by street and number as 1349-1351 South Mansfield Avenue, Los Angeles, California."

6. The Referee erred in respect to said order in that said order is contrary to the law of the State of California.

Wherefore, your petitioner prays that said order be reviewed by a Judge in accordance with the provisions of the Act of Congress relating to Bankruptcy; that said order be reversed, and that your petitioner have such other and further relief as is just.

Dated: December 19th, 1956.

/s/ CRULES R. CHEEK,

Petitioner,

/s/ LESLIE S. BOWDEN,

Attorney for Petitioner. [48]

[Note: Exhibit A "Judgment and Order" is set out at pages 17-18.]

[Endorsed]: Filed December 19, 1956.

United States District Court, Southern District  
of California, Central Division

No. 68,324-WM In Bankruptcy

In the Matter of

JOSEPH ESTEN,

Bankrupt.

ORDER ON REVIEW OF REFEREE'S OR-  
DER OF DECEMBER 11, 1956 REFORM-  
ING A DECLARATION OF HOMESTEAD

Upon the petition for review filed by the trustee on December 19, 1956; upon the certificate of the Referee Benno M. Brink, filed January 9, 1957; and upon the proceedings had before the Referee as appear from his certificate; and it appearing to the court that:

(1) "the [homestead] exemption here in question is defined by California law \* \* \* [and] the Bankruptcy Act declares the policy of Congress to give effect to state exemption laws" [Gardner v. Johnson, 195 F. 2d 717, 719 (9th Cir. 1952); Lynch v. Stotler, 215 F. 2d 776, 778 (9th Cir. 1954); 11 U.S.C. § 24];

(2) since the declaration of homestead filed before the petition in bankruptcy does not describe the property upon which the bankrupt resided, but instead mistakenly and clearly describes another [51] lot in the same tract, this declaration of homestead does not substantially comply with the statutory and necessary requirement that "the declaration of homestead must contain: \* \* \* a de-

scription of the premises" [Cal. Civ. Code § 1263]; and so no notice of claim of homestead exemption was thereby given [Harris v. Duarte, 141 Cal. 497, 75 Pac. 58 (1903); Carey v. Douthitt, 140 Cal. App. 409, 35 P. 2d 632 (1934); see also: Donnelly v. Tregaskis, 154 Cal. 261, 97 Pac. 421, 422 (1908); Schuyler v. Broughton, 76 Cal. 524, 18 Pac. 436 (1888); Oktanski v. Burn, 138 Cal. App. 2d 419, 291 P. 2d 954, 956 (1956); Rich v. Ervin, 86 Cal. App. 2d 386, 194 P. 2d 809, 812 (1948); cf: Johnson v. Brauner, 131 Cal. App. 2d 713, 281 P. 2d 50, 56 (1955); In re Kossack, 113 F. Supp. 884 (S. D. Cal. 1953)];

(3) inasmuch as the trustee in bankruptcy is "vested by operation of law with the title of the bankrupt as of the date of the filing the petition" in bankruptcy [11 U.S.C. § 110], the trustee's interest in the bankrupt's property cannot be altered by the filing of a declaration of homestead under California law after the petition in bankruptcy has been filed; hence the second declaration of homestead at bar, filed by the bankrupt's wife as owner of an undivided one-half interest in the bankrupt's residence, could not affect the trustee's undivided one-half interest in the bankrupt's residence [Schuler-Knox Co. v. Smith, 62 Cal. App. 2d 86, 144 P. 2d 47 (1943)]; [52] Sampsell v. Straub, 194 F. 2d 288 (9th Cir. 1951), cert. denied, 343 U. S. 927 (1952)]; and

(4) it is not possible, under the California law, to reform retroactively a defective declaration of homestead, which mistakenly failed substantially

to comply with statutory requirements, into a valid declaration of homestead [*Carey v. Douthitt*, supra, 140 Cal. App. at 412, 35 P. 2d at 633; see *Harris v. Duarte*, supra, 141 Cal. 497, 75 Pac. 58; *Gross v. Strelitz*, 54 Cal. 640 (1880); cf. Cal. Civ. Code § 3399].

It Is Ordered that the Referee's order under review, dated December 11, 1956, reforming the first declaration of homestead, is hereby reversed.

It Is Further Ordered that the Clerk this day serve copies of this order by United States mail on

- (1) Referee Benno M. Brink;
- (2) the attorney for the Trustee; and
- (3) the attorney for the Bankrupt.

April 3, 1957.

/s/ WM. C. MATHES,

United States District Judge. [53]

[Endorsed]: Filed April 3, 1957. Docketed and Entered April 4, 1957.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

To the Clerk of the Above Entitled Court and to  
Leslie S. Bowden, Attorney for Crules R.  
Cheek, Trustee in Bankruptcy:

Please take notice that the bankrupt, Joseph Esten, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order on review of Referee's Order of December 11, 1956, docketed and entered April 4, 1957, in favor of

Crules R. Cheek, Trustee in Bankruptcy, and against Joseph Esten, the bankrupt.

Dated this 13th day of April, 1957.

/s/ PHILL SILVER,

Attorney for Bankrupt. [54]

Affidavit of Service by Mail attached. [55]

[Endorsed]: Filed April 15, 1957.

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[Title of District Court and Cause.]

#### CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled cause:

A. The foregoing pages numbered 1 to 60, inclusive, containing the original:

Petition in Bankruptcy;

Order of Adjudication and of General Reference;

Objections to Trustee's Report of Exempt Property and Points and Authorities;

Petition for Order to Show Cause why Declaration of Homestead on Real Property of Bankrupt Should Not Be Reformed to Correct Clerical Error;

Order to Show Cause why Declaration of Homestead on Real Property of Bankrupt Should Not Be Reformed to Correct a Clerical Error;

Response of Trustee;

Findings of Fact and Conclusions of Law;

Judgment and Order Reforming Declaration of Homestead;

Petition for Review;

Order on Review of Referee's Order of December 11, 1956 Reforming a Declaration of Homestead;

Notice of Appeal;

Designation of Records;

Statement of Points Upon Which Appellant Intends to Rely;

C. Bankrupt's exhibit A, Trustee's exhibit 1, and Anna Esten's exhibit A (for identification only).

I further certify that my fee for preparing the foregoing record amounting to \$1.60, has been paid by appellant.

Witness my hand and seal of the said District Court this 24th day of May, 1957.

[Seal] JOHN A. CHILDRESS,

Clerk,

By /s/ CHARLES E. JONES,

Deputy.

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[Endorsed]: No. 15578. United States Court of Appeals for the Ninth Circuit. Joseph Esten, Appellant, vs. Crules R. Cheek, Trustee in Bankruptcy of the Estate of Joseph Esten, bankrupt, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: May 25, 1957.

Docketed: June 10, 1957.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.



In the United States Court of Appeals  
for the Ninth Circuit

No. 15578

JOSEPH ESTEN,

Appellant,

vs.

CRULES R. CHEEK, Trustee,      Respondent.

STATEMENT OF POINTS UPON WHICH  
APPELLANT INTENDS TO RELY

I.

The United States District Court erred in determining that the Declaration of Homestead does not substantially comply with the statutory requirement that the Declaration of Homestead must contain a description of the premises.

II.

The Court erred in determining that the Referee's Order, dated December 11, 1956, reforming the Declaration of Homestead could not be reformed.

Dated: This 19th day of July, 1957.

/s/ PHILL SILVER,

Attorney for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 22, 1957. Paul P. O'Brien,  
Clerk.